IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT LaDELL JOHNSON,)	
Plaintiff,)	
VS.)	CASE NO. CIV-11-1468-D
)	
HANSEN, P.A.,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Defendant Oklahoma County Jail

Plaintiff has filed this action pursuant to 42 U.S.C. § 1983 complaining of violations of his constitutional rights at the Oklahoma County Jail [Doc. No. 1]. Plaintiff is proceeding *pro se* and *in forma pauperis* [Doc. Nos. 1 and 2]. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B) and (C); service of process and a special report from the officials responsible for the Oklahoma County Jail were ordered [Doc. No. 8]. See *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978). Now pending for determination is the motion of the Oklahoma County Jail to dismiss Plaintiff's complaint pursuant to Rule 12 (b) (6), Fed. R. Civ. P. [Doc. No. 19]. Plaintiff has filed no response to the motion.

Named Defendant Oklahoma County Jail has moved for dismissal based upon the argument that the Oklahoma County Jail is not a legal entity with the capacity to be sued.

Id. at 2-3.¹ This contention is well-taken. The Oklahoma County Jail does not have a legal identity separate from that of Oklahoma County. Consequently, the Oklahoma County Jail is not a suable entity, and is not a proper defendant in a § 1983 action. *See Aston v. Cunningham*, No. 99-4156, 2000 WL 796086, at *4 n.3 (10th Cir. June 21, 2000) (unpublished op.). Therefore, any claims against it should be dismissed.

RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

Because there is no set of circumstances under which Plaintiff would be entitled to relief against named Defendant Oklahoma County Jail, it is recommended that Defendant Oklahoma County Jail's motion to dismiss [Doc. No. 19] be granted and that Plaintiff's complaint against it be dismissed with prejudice.

The parties are advised of their right to file an objection to this Report and Recommendation with the Clerk of this Court by August 28, 2012, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The parties are further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F. 2d 656 (10th Cir. 1991).

This Report and Recommendation and today's separate Report regarding Plaintiff's claims against Defendant Hansen dispose of all issues referred to the undersigned Magistrate Judge in this matter.

¹Defendant Oklahoma County Jail correctly points out that it has not been served [Doc. No. 19, n.1].

ENTERED this 8th day of August, 2012.

BANA ROBERTS

UNITED STATES MAGISTRATE JUDGE